

Appl. No.: 10/766,971  
Amdt. dated September 6, 2005  
Reply to Office Action of July 7, 2005

### **REMARKS/ARGUMENTS**

#### **Election/Restriction Requirement**

In the Office Action of 07/07/2005, Examiner explains that the prior Office Action was not fully responded to. Examiner further explains that although Species II was elected for prosecution, no listing of claims readable on Species II has been provided. Examiner also invites Applicant to clarify his position regarding the presented traversal argument.

#### **Comments**

In the prior Office Action of 04/19/2005, Examiner explained that that there are patentably distinct species of the claimed invention as contained in the claims. Examiner again explained that the species are as follows:

- A. Species I – the structured package as illustrated in Figure 1.
- B. Species II – the structured package as illustrated in Figure 3.
- C. Species III – the structured package as illustrated in Figure 4.
- D. Species IV – the structured package as illustrated in Figure 5.
- E. Species V – the structured package as illustrated in Figure 6.

Examiner further explained that Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable.

However, Applicant respectfully point out the fact that Examiner identified the species based upon the drawings of Applicant's invention. Examiner did not establish any relationship between the species and the claims to therefrom identify and explain the existence of multiple species therewithin. The only mention of claims by Examiner was only to indicate that claim 1 is generic.

In order to avoid making any assumptions on Examiner's behalf as to which claims were intended by Examiner to relate to which species, Applicant's response to the prior office action only elected one of the Examiner-provided species but not the claims relating thereto, par consequent.

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#### **Election of Single Disclosed Species**

Applicant respectfully submits that with the amendments to the claims to rectify the typographical errors therein, the claims corresponding to the species taxonomy as provided by Examiner are as follows:

- A. Species I – the structured package as illustrated in Figure 1 corresponding generally to amended claim 1.
- B. Species II – the structured package as illustrated in Figure 3 corresponding generally to claims and amended claims 1-11, 15, 16 and 21-27.
- C. Species III – the structured package as illustrated in Figure 4 corresponding generally to claims and amended claims 1, 2, 17, 18, 19, 28 and 29.
- D. Species IV – the structured package as illustrated in Figure 5 corresponding generally to amended claims 1, 2, 14 and 30.
- E. Species V – the structured package as illustrated in Figure 6 corresponding generally to claims 13 and 20 and amended claims 1, 2 and 12.

As requested by Examiner in accordance with 35 U.S.C. 121, Applicant elects Species II in accordance with the Examiner specified species taxonomy. Specifically, Applicant submits that Species II (indicated by Examiner as being illustrated in Figure 3) comprises claims 5, 8, 11, 16, 21-24 and 26, and amended claims 1-4, 6, 7, 9, 10, 15, 25 and 27.

Applicant respectfully submits that in light of the now properly identified claims relating to the identified species, the traversal arguments provided hereinafter should no longer be unclear and confusing to Examiner.

#### **Response to the Election/Restriction Requirement**

The requirement for election is respectfully traversed on the grounds that the various species referred to in the prior Office Action are simply different embodiments of the same invention. Applicant respectfully submits that invention, as described in one aspect in amended claim 1, relates specifically to a structure package comprising: a first semiconductor chip having a first integrated circuit; a substrate having a first electrically conductive pattern formed thereon, the first electrically conductive pattern being an antenna layer; and a plurality of pillars, at least

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one of the plurality of pillars extending from the first semiconductor chip to the substrate for structurally intercoupling and spatially interdisplacing the first semiconductor chip and the substrate for forming a first channel therebetween, wherein at least one of the plurality of pillars is for electrically communicating the first integrated circuit with the first electrically conductive pattern.

Applicant further submits that although each of claims 21 and 26 describes a data transceiver, such data transceivers are structurally structure packages as described in amended claim 1 of Applicant's invention. Additionally, each of claims 21 and 26 contains the elements and exhibits the functionality of the structure package as described not only in amended claim 1 but also in amended claim 2 which is dependent on amended claim 1. Therefore, although each of claims 21 and 26 does not expressly indicate dependency on amended claim 1 and belong a different family of claims to the same invention, each of claims 21 and 26 are elementally dependent on amended claim 1 although not expressly indicated. Applicant brings to Examiner's attention that Applicant's invention as described in amended claim 1 is structurally demonstrated in different embodiments as illustrated in Figures 1 and 3-6, and therefore has presented a generic invention with a generic claim and set forth a number of embodiments falling within the generic invention.

It is submitted that 37 CFR 1.141 points out that distinct inventions may not form a single general inventive concept and may not be claimed in one application. However, the rule states that more than one species of an invention may be specifically claimed in different claims in one application, provided the application also includes an allowable generic claim and all claims to the species in excess of one are written in dependent form or otherwise include all limitations of the generic claim. It is submitted that Applicant's application demonstrates this situation precisely. Therefore, Applicant respectfully submits that the requirement for election is improper.

Furthermore, Examiner's position in the Office Action that Applicant's traversal of this requirement for election on the ground that different embodiments of the same invention are presented may result in the evidence or admission being used in a rejection under 35 U.S.C. 103(a) of the other invention if Examiner finds one of the invention unpatentable over the prior art, is believed improper and contrary to the law. It is believed clear that Applicant's teaching of

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equivalency in Applicant's own specification is not available to Examiner as an admission in a rejection under 35 U.S.C. 103. Instead, the equivalence must be disclosed in the prior art. Any disclosure of equivalence in Applicant's specification cannot be used by Examiner to support rejections thereof. See *In re Ruff et al.*, 256 Fed. 2d. 590. 118 USPQ 340. Therefore, Applicant respectfully submits and insist that this portion of the Office Action represents an improper use of Applicant's disclosure and Applicant's traversal of this election requirement cannot be used against him in future prosecution of this application.

### CONCLUSION

Applicants respectfully request reconsideration and that a timely Notice of Allowance be issued in this case. It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.36(a), and any fees required are hereby charged to Conley Rose, P.C.'s Deposit Account Number 03-2769/2085-01300.

Respectfully submitted,



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